IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 33828 of 2004(B)

OS.173/1997 of PRL.SUB COURT,KOTTAYAM
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PETITIONER:

MATHEW JACOB @ RAJU, S/O.CHACKO,
PANACHERIL, EDAKUNNAM KARA, KANJIRAPPALLY.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENTS:

E.J.JOHN, S/O.JOSEPH, ERIKATTU HOUSE,
THAZHATHANGADI, KOTTAYAM.

BY ADV. SRI.V.GIRI
SRI.L.RAJESH NARAYAN
SRI.MANURAJ. K.J

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.33828/04

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE AMENDMENT PETITION DTD. 2-11-04 IN O.S.NO.173/97 BEFORE THE SUB COURT, KOTTAYAM**
EXT.P2	**TRUE COPY OF THE ORDER DTD. 10-11-04 ON 1.A.NO.30335/04 IN O.S.NO.173/97 BEFORE THE SUB COURT, KOTTAYAM**

/True Copy/

PA to Judge.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33828 OF 2004

Dated this the 16th day of July, 2007

JUDGMENT

In this Writ Petition the 6th defendant impugns Ext.P2 order by which the learned Subordinate Judge dismissed an application for amendment of written statement filed by the petitioner. The suit was for declaration of plaintiff's title and for recovery of possession. During the pendency of the suit a Receiver was appointed for taking possession of and administering the property. Later, the plaintiff-respondent got back the possession from the Receiver since, in the meanwhile, a suit filed by the petitioner seeking specific performance of the contract for sale was dismissed. In the written statement originally filed by the petitioner there was no contention that the petitioner is entitled for the benefit of equity of Section 53 A of Transfer of Property Act. Through the amendment application what the petitioner seeks is to incorporate pleadings in the written statement so as to raise a claim that the petitioner is entitled for the equity of Section 53 A. Several serious objections were raised by the respondent before the court below and the court below turned down many of those objections. However, the court below became inclined to uphold two of them. The first objection which is upheld by the court below is that allowing the amendment will be beyond the scope of the order of remand which had been passed by this court in CRP No.41 of 2004. The second objection is that the application is

hopelessly belated and has been filed without any bonafidies. These two objections were upheld by the court below.

2. Heard both sides. Learned counsel for the petitioner would submit that subsequent to the passage of Ext.P2 the petitioner moved this Court and got a review of the order of this Court in CRP No.41 of 2004. Learned counsel placed before me a copy of the order in RP No.848 of 2004 and the counsel would submit on the basis of that order that this Court has clarified that the order of remand passed earlier in CRP No.41 of 2004 was not a restricted one and that it was open to either of the parties to file whatever applications they choose. It is therefore not correct on the part of the court below to have dismissed the amendment application on the reason that allowing the application will be beyond the scope of the order of remand passed by this Court on CRP No.41 of 2004. Learned counsel would submit that the amendments which are necessary for resolving the real controversy between the parties can be allowed at any stage even in the Second Appeal.

3. Mr.Rajesh, counsel for the respondent would resist all the submissions of the learned counsel for the petitioner very stiffly. Copy of the written statement already filed by the petitioner was placed before me by the learned counsel for the petitioner. A perusal of that written statement will show that the contention that the petitioner is entitle for the equity under Section 53 A of Transfer of Property Act has not been raised

at all by the petitioner. Even the essential ingredients for constituting such a plea had not been raised. In other words, granting the amendment sought for will amount to permit the petitioner to raise a plea which he had not raised at all. But, then it may be possible in a given case that the court could grant such amendments also, provided the same does not cause any prejudice or injustice to the adversary in the litigation. The Submission of Mr.Rajesh that prejudice will be occasioned to the petitioner by allowing the amendment sought for cannot be said to be totally without merit. Since it is not disputed before me that a suit for specific performance of contract for sale filed by the petitioner has been finally dismissed by the respondent and it is also not disputed that the petitioner has been concededly dispossessed from the property finally by the Receiver and now the respondent-plaintiff has been given back possession. Apart from the above reasons, the further question whether the order of this Court in CRP No.41 of 2004 which has of course been reviewed by the order in RP No.848 of 2004 will enable the petitioner to seek amendment of the written statement is a question which should be answered.

4. I have called for the papers relating to the review petition and perused the same since neither of the counsel was able to hand over to me copy of the review petition. It is seen that review petition was disposed of clarifying that while allowing the review petition this court never intended to restrict the scope of the enquiry or trial of the suit. It was also clarified that

both sides are entitled to file objections and to adduce evidence. If any application is filed that application will be considered after hearing the objections raised by either side and disposed of in accordance with law. Time limit fixed by this court is enlarged and extended by another three months from the date of the order in the civil revision petition i.e. 05/01/2005.

5. Having considered the rival submissions addressed at the Bar and having scanned the materials available on record and keeping in mind the settled principles governing amendment of pleadings, I am inclined to allow the writ petition as well as the application for amendment filed by the petitioner, but only on very strict conditions. Accordingly, it is ordered that Ext.P2 will stand set aside and Ext.P1 application for amendment will stand allowed on condition that the petitioner pays a total amount of Rs. 11,000/- by way of cost, out of which Rs.10,000/- will be paid to the plaintiff-respondent and Rs. 1,000/- will be paid to the High Court Legal Service Committee within one month of receiving copy of this judgment. Failing payments as above, the impugned order will stand confirmed and the writ petition will stand dismissed. It is needless to mention that upon the order allowing amendment application becoming operative, learned Subordinate Judge will permit the respondent-Plaintiff to raise additional pleadings.

The court will permit the petitioner to carry out the amendment presently allowed within two weeks of petitioner placing a copy of this

judgment or within two weeks of the order allowing interlocutory application becoming operative, whichever is later.

PIUS C. KURIAKOSE, JUDGE

btt/sv

PIUS.C.KURIAKOSE, J.

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W.P(C)No.33828 OF 2004

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Dated this the th day of February, 2008

JUDGMENT

PIUS.C.KURIAKOSE

JUDGE

sv.